
In The OFFICE OF THE CLERK
Supreme Court of the United States

ROSA PÉREZ-PERDOMO, in her official
capacity as Secretary of Health of the
Commonwealth of Puerto Rico,

Petitioner,

v.

WALGREEN CO.; WALGREEN OF SAN PATRICIO;
and WALGREEN OF PUERTO RICO,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The National Health Planning and Resources Development Act of 1974, Pub. L. No. 93-641, 88 Stat. 2225 (repealed 1986) (the "1974 Act"), expressly conditioned the receipt of federal health care funds by the States on their establishment of "Certificate of Need" ("CON") programs. Relying on the federal statute, the Commonwealth of Puerto Rico and forty-nine of the States enacted legislation creating CON programs, which require health service providers to demonstrate that there is a need for their services in a particular locale before they engage in certain regulated activities. In 1979, the Commonwealth of Puerto Rico included pharmacies within the scope of its CON program. Although Congress repealed the 1974 Act in 1986, it did not require the States to repeal their own CON laws. Accordingly, these laws continue to be enforced, not only in Puerto Rico, but also in approximately 37 States. The U.S. Court of Appeals for the First Circuit, however, held that Puerto Rico's CON statute, at least as applied to pharmacies, violates the dormant Commerce Clause.

The questions presented are:

- 1) Whether the fact that the National Health Planning and Resources Development Act of 1974 clearly authorized State CON laws continues to insulate such laws from dormant Commerce Clause scrutiny, even though the Act was repealed in 1986; and
- 2) If the answer to Question 1 is no, then whether a CON program runs afoul of the dormant Commerce Clause, even if it is facially-neutral with

QUESTIONS PRESENTED - Continued

respect to interstate commerce, and even if the incidental effects it has on interstate commerce were the result of the incorporation of a grandfather clause intended to avoid the potential for unfairness in retroactively applying the new requirements to existing health-care institutions.

PARTIES TO THE PROCEEDINGS

The appellants below were Walgreen Co., Walgreen of San Patricio, Inc., and Walgreen of Puerto Rico, Inc. The appellee was John V. Rullán in his official capacity as Secretary of Health of the Commonwealth of Puerto Rico. Thereafter Rosa Pérez-Perdomo substituted John V. Rullán as Secretary of Health, and is the petitioner in this proceeding pursuant to Sup. Ct. R. 35.3.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the First Circuit reversing the District Court's judgment was entered on April 22, 2005, is reported at *Walgreen Co. v. Rullán*, 405 F.3d 50 (1st Cir. 2005), and is reproduced in the appendix at 1-19. The order of the Court of Appeals denying the petition for rehearing en banc was entered on June 7, 2004, is not officially reported, and is reproduced in the appendix at 52-53. The opinion of the District Court granting Petitioner's motion for summary judgment was entered on September 8, 2003, is reported at *Walgreen v. Rullán*, 292 F. Supp. 2d 298 (D.P.R. 2003), and is reproduced in the appendix at 20-51.

STATEMENT OF JURISDICTION

The decision of the Court of Appeals was entered on April 22, 2005. App. 2. A timely petition for rehearing en banc was denied on June 7, 2005. App. 52. On August 24, 2005, this Honorable Court granted an extension of time until November 4, 2005, to file the instant petition. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED IN THE CASE

1. The Commerce Clause of the United States Constitution, which grants Congress the power: "[t]o regulate commerce with foreign nations, and among the several States, and with the Indian tribes." U.S. Const. Art. I, § 8, cl. 3.

2. The Certificate of Necessity and Convenience Act of the Commonwealth of Puerto Rico (hereinafter "the CNC Act"), 1975 P.R. Laws 2 (codified as amended at 24 P.R. Laws Ann. §§ 334-334j), reproduced in the appendix to the petition at 54-74.

3. Puerto Rico Department of Health Regulation No. 3335 of August 15, 1986 (hereinafter "Regulation 56"), *repealed* by Regulation No. 6786 of March 9, 2004 (hereinafter "Regulation 112"). The official translation of Regulation 56 is reproduced in the appendix to the petition at 75. The certified translation of Regulation 112 is reproduced in the appendix to the petition at 126.

STATEMENT OF THE CASE

A. Statutory Background

As noted earlier, Congress enacted the National Health Planning and Resources Development Act of 1974 as a means to promote the orderly planning of health services by the states and thus correct perceived deficiencies in the existing health system. *See* Pub. L. No. 93-641, 88 Stat. 2225 (repealed 1986). It found that the lack of uniformity within the system prompted an unnecessary duplication of health services and contributed to an inflationary increase in health costs. Additionally, the uneven distribution of resources left large segments of the population lacking even the most basic knowledge about proper health care and the effective use of available services. *Id.* In order to correct these deficiencies, Congress conditioned the receipt of federal health care funds by the states to the establishment of CON programs, which require health service providers to demonstrate that